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Public Service Commission

January 19, 2001

VIA AIRBORNE EXPRESS

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW - TW-A325
Washington, DC 20554

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Re: CC Docket No. 99-217, Promotion of Competitive Networks in Local Telecommunications Markets;
Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services;
CC Docket No. 96-98 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; and
CC Docket No. 88-57, Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network

Dear Ms. Salas:

Enclosed are an original and five copies of Comments of the Florida Public Service Commission in CC Docket No. 99-217, along with five copies of a two-volume report entitled *Access by Telecommunications Companies to Customers in Multitenant Environments*, published by the Florida Public Service Commission in February 1999.

Please date stamp and return one copy of the Comments in the enclosed self-addressed envelope.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia B. Miller".

Cynthia B. Miller, Esquire
Bureau of Intergovernmental Liaison

CBM:tf

Enclosures

cc: Brad Ramsay, National Association of Regulatory Utility Commissioners
International Transcription Services, Inc.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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In the Matter of:)	
)	
Promotion of Competitive Networks in Local)	WT Docket No. 99-217
Telecommunications Markets)	
)	
Wireless Communications Association)	
International, Inc. Petition for Rulemaking to)	
Amend Section 1.4000 of the Commission's)	
Rules to Preempt Restrictions on Subscriber)	
Premises Reception or Transmission Antennas)	
Designed to Provide Fixed Wireless Services)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications)	
Act of 1996)	
)	
Review of Sections 68.104, and 68.213 of the)	CC Docket No. 88-57
Commission's Rules Concerning Connection of)	
Simple Inside Wiring to the Telephone Network)	
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**COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING**

The Florida Public Service Commission (FPSC) hereby respectfully submits its comments to the Further Notice of Proposed Rulemaking in the CC Dockets No. 99-217. The FPSC commends the efforts to ensure the ability of competing telecommunications providers to serve customers in multiple tenant environments (MTEs).

Introduction and Summary

While we comment specifically on the question of extending the prohibition on exclusive access contracts to residential MTEs, we also raise our concerns regarding the FCC's change in procedures for moving the demarcation point to the minimum point of entry (MPOE). In addition,

these comments address the need for a forum to resolve disputes. The FPSC recognizes that competitors may face difficulties in serving tenants of MTEs and has already explored these issues in the February 1999 Florida *Report on Access by Telecommunications Companies to Customers in Multitenant Environments* (Report). We are enclosing our report in order to share our research and the issues we addressed.

Residential Exclusive Contracts

In its order, the FCC prohibited exclusive access contracts between building owners or managers of commercial MTEs and now seeks comment on whether to extend such prohibition to residential MTEs. The FPSC believes the prohibition on exclusive access contracts is appropriate and should be extended to residential MTEs. In our report, we determined that “[e]xclusionary contracts bar access to tenants by any competitors. Exclusionary contracts are inherently anticompetitive and should, therefore, be prohibited as being against public policy.” (Report at p. 40)

Preferential Marketing Agreements and Other Preferential Arrangements

The FCC also seeks comment on whether it “should prohibit carriers from entering into contracts that grant them preferences other than exclusive access, such as exclusive marketing or landlord bonuses to tenants that use their services, in some or all situations.” The FPSC determined in its Report that, although such agreements were not as “blatantly anticompetitive” as exclusionary contracts, they impede competition because a landlord could encourage tenants to be served by one telecommunications company over others. Although the FPSC did not recommend prohibiting such arrangements at the time of the report, the report did state that landlords should disclose the existence of such marketing agreements to potential tenants. (Report at p. 40)

Filing of Complaints

In ¶158, the FCC seeks comment on how any nondiscriminatory access rule should be enforced. The FCC asks whether aggrieved parties should invoke the FCC's general procedures for complaints against common carriers. Thus the FCC is considering handling complaints filed by landlords, carriers, and customers in these matters.

It is crucial that a proper forum be established for settling disputes and proper claims regarding access to tenants in multitenant environments by telecommunications companies. A specific forum does need to be identified. Currently, there are overlapping jurisdictions with Federal regulatory agencies, state regulatory agencies, and the Courts. In our 1999 Report at pages 49-50, we recommended that there be a threshold for bringing disputes and certain standards for review.

Some of the suggestions were:

- Tenants, landlords, and telecommunications providers should make every reasonable effort to negotiate access to a tenant requesting service.
- A landlord may impose conditions reasonably necessary for the safety, security, and aesthetics of the property.
- A landlord may not deny access to space or conduit, previously dedicated to public service, if that space or conduit is sufficient to accommodate the facilities needed for access.
- A landlord may deny access where the space or conduit required for installation is not sufficient to accommodate the request or where the installation would harm the aesthetics of the building.
- A landlord may not charge a fee solely for the privilege of providing telecommunications service in an MTE.

The FPSC is willing and is better positioned to handle some of the complaints in Florida, at least as to complaints filed against the carriers (i.e., customer complaints, carrier-to-carrier disputes).

¹ In responding to these complaints, the FPSC would apply its own rules.

Access to Wiring/Minimum Point of Entry

We need to make sure that we are able to pinpoint responsibility when there is a problem. We need to understand how this would affect our rules on the demarcation point and whether there is preemption. The FPSC assumes that the FCC has not preempted states' demarcation rules; therefore, Florida will maintain its current rules requiring the demarcation point at each customer's premises in multi-tenant dwellings. In the past, we have filed comments expressing concern that the customer may be harmed if the demarcation point is defined as the minimum point of entry (MPOE). For example, Florida requires local exchange companies (LECs) to complete primary telephone service installation in three working days to the demarcation point within customers' premises. By changing the demarcation point to the MPOE, LECs would be relieved of any responsibility or burden to ensure the customer has dial tone within the customer's premises. Under the MPOE scenario, the LEC has fulfilled its obligation once it has introduced service at the MPOE. The landlord or other responsible party may take several days or weeks to complete the connection from the MPOE to the customer's premises. While we have authority to require the carriers to meet

¹ In our 1999 Report, we noted that the FPSC "would not have authority over controversies pertaining to mandatory multitenant access without specific legislative authority." (Report at p. 56) Thus, while we could address customer complaints against carriers and carrier-to-carrier disputes in certain instances, the FPSC does not have express jurisdiction over landlords. It would be possible to make a requirement that if any carrier serves a customer in an MTE building, it must make any spare facilities available to its competitors. This might eliminate most of the complaints that would arise against the landlord. We note that the FCC looks to Section 201(b) for its authority in this area. That section authorizes the FCC to regulate all practices in connection with interstate communication service. The FCC cites *Cable & Wireless v. FCC*, 166 F3d 1224, 1230-32 (D.C. Cir. 1999) for its "undoubted power to regulate the contractual or other arrangement between common carriers and other entities, even those entities that are generally not subject to Commission regulation." (p. 18)

certain time frames, we do not have authority to mandate time frames for landlords to act. The FPSC believes that this is not in the public's interest.

If the FCC's purpose of moving the demarcation point to the MPOE is to foster competition, we believe there may be a better approach. Currently, in Florida, a competitive local exchange company (CLEC) must enter into an interconnection agreement with the incumbent LECs to acquire dial tone, collocation, or unbundled network elements. The CLECs may obtain the entire local loop, connect at the MPOE and lease the wire to the customer's premises from the entity that owns it, or acquire the loop all the way to the customer's premises. The wire from the MPOE to the customer's premises is considered network wire in Florida. Landlords, CLECs, or LECs are not precluded from owning the wire installed between the MPOE and demarcation point within the customer's premises. The local service provider and the owner of the wire between the MPOE and the demarcation point can be required to reach an agreement on the use of the wire. This approach would eliminate the landlord's concern of having to provide any additional conduit access for other companies to place their own wiring.

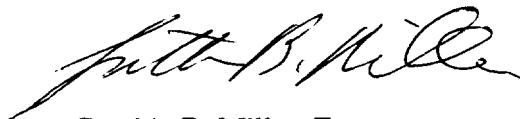
It appears that equal application of Florida's demarcation point rule to CLECs and LECs might ensure the FPSC's authority to best serve the interests of the public. Responsibility for delivery of dial tone to the customer, at his premises in a multi-tenant environment would fully rest with the provider offering the service. This is an approach that Florida may consider in rulemaking. If the FCC also adopted this approach, it appears that the customers might reap the benefits of competition without the fear of not receiving the service purchased.

Conclusion

In its ongoing attempts to ensure the promotion of competition in MTEs, the FPSC urges the Commission to continue its efforts to ensure that customers in multi-tenant environments have the opportunity to receive the benefits of competition. As the FPSC stated in its Report:

A Multitenant environment (MTE) in which a landlord or building owner controls access to the telecommunications equipment area or other related facilities in a structure appears to be a situation where limitations to competition may exist. A tenant in an MTE should have reasonable access to any telecommunications company, and a telecommunications company should have reasonable access to a tenant. Equally important, it is unacceptable for an incumbent local exchange company (ILEC) to use its incumbent position to limit an alternative local exchange company's (ALEC) ability to market its services or install its equipment in an MTE, and landlords should not impede access to competitive telecommunications service. (Report at p. 1)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cynthia B. Miller".

Cynthia B. Miller, Esq.
Bureau of Intergovernmental Liaison

FLORIDA PUBLIC SERVICE COMMISSION
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DATED: January 19, 2001

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of the Florida Public Service Commission will be furnished, without the attachment, to the parties on the attached list.

A handwritten signature in black ink, appearing to read "Cynthia B. Miller". The signature is fluid and cursive, with the first name "Cynthia" being more prominent.

Cynthia B. Miller, Esq.
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DATED: January 19, 2001.

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For reports see docket # 99-217.